

**Letter of Findings: 04-20211054
Gross Retail and Use Tax
For the Years 2018 through 2020**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

After protesting an assessment of additional sales and use tax, Indiana Metal Fabricator provided an additional customer sales tax exemption certificate which justified a requested adjustment to Fabricator's sales tax assessment.

ISSUE

I. Gross Retail and Use Tax - Exemption Certificate.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-8-8; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's assessment of additional sales and use tax should be adjusted to reflect a customer's recently provided exemption certificate.

STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing its customers laser and plasma metal cutting services. Taxpayer produces and sells metal items based on the customer's specifications. Taxpayer also provides its customers repair services.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records and tax returns. In doing so, the audit found that Taxpayer had failed to obtain exemption certificates from a number of its customers. The audit asked Taxpayer to obtain the missing exemption certificates or provide proof of exemption for these customers. According to the audit report, "[T]axpayer was unable to provide exemption certificates or other documentation supporting the exemption for the listed customers."

The audit resulted in an assessment of additional sales and/or use tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis of the protest. This Letter of Findings results.

I. Gross Retail and Use Tax - Exemption Certificate.

DISCUSSION

The issue is whether Taxpayer has provided documentation sufficient to establish that it was not required to collect sales tax from one of its customers. Following completion of the audit and assessment, Taxpayer continued to ask its customers to provide additional exemption certificates but only obtained one certificate from one particular customer. This Letter of Findings addresses that one particular customer and its exempt status and whether the assessment should be adjusted to reflect that customer's exempt status.

Taxpayer was assessed additional sales/use tax because it failed to collect the tax from one of its customers. Taxpayer disagrees and therefore, it is the Taxpayer's responsibility to establish that the sales/use tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of*

State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Sales tax is imposed by IC § 6-2.5-2-1, which states in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. *The retail merchant shall collect the tax as agent for the state. (Emphasis added).*

When a purchaser claims the purchase "is exempt from the state gross retail [] tax[], the purchaser may issue an exemption certificate to the seller instead of paying the tax." IC § 6-2.5-8-8(a). The "seller accepting a proper exemption certificate under [IC § 6-2.5-8-8] has no duty to collect or remit the state gross retail [] tax on that purchase." *Id.* In those instances in which the seller accepted an "incomplete exemption certificate," Under IC § 6-2.5-8-8(d) the seller is permitted 120 days in which to "prove by other means that the transaction was not subject to state gross retail or use tax."

There is no question that Taxpayer engaged in retail transactions for which - absent an exemption - Taxpayer was required to collect sales tax. Taxpayer is reminded that sales tax becomes due at the time of the transaction; either the purchaser is exempt at the time of the transaction or it is not exempt. If the purchaser claims an exemption, the exemption certificate should be obtained at the time the transaction occurs otherwise the burden of proving the transaction was exempt becomes measurably more difficult.

Nonetheless, during the audit, the Department requested and Taxpayer, in good faith, attempted to obtain the properly executed exemption certificate from its customers before the audit was concluded. In this case, Taxpayer provided a form ST-105 ("General Sales Tax Exemption Certificate") from one of its retail customers.

As explained above, Taxpayer - as a retail merchant - is required to collect sales tax from its customers when Taxpayer sells tangible property. IC § 6-2.5-2-1. Thereafter, Taxpayer holds that tax in trust on behalf of Indiana. *Id.* However, upon receiving a properly completed exemption certificate, Taxpayer is relieved of its responsibility of collecting the tax. IC § 6-2.5-8-8(a).

To the extent that the Department assessed Taxpayer sales tax on retail transactions which this particular customer, Taxpayer has met its statutory burden under IC § 6-8.1-5-1(c) of proving that the transaction was not subject to gross retail or use tax.

FINDING

Taxpayer's protest is sustained.

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